

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

No. C-08-4238 EMC

Plaintiff,

v.

**ORDER RE ADMISSIBILITY OF
RESTATEMENT**

RAJ P. SABHLOK and MICHAEL C.
PATTISON,

(Docket No. 253)

Defendants.

On August 16, 2010, Defendant submitted an unsolicited letter further arguing why the Restatement should be excluded from evidence. The Court treats the letter as yet another request for reconsideration of its earlier ruling that the Restatement is admissible subject to certain redactions. As such, the motion fails to comply with Civil Local Rule 7-9 and is therefore **DENIED**.

Even if the Court were to reach the merits of the motion, it is **DENIED**. The SEC correctly points out that there is language in *Paddack v. Dave Christensen, Inc.*, 745 F.2d 1254 (9th Circ. 1984) that support this Court's conclusion that the Restatement is admissible as a business record. As the Ninth Circuit noted in *Paddack*, "Although a financial statement audit is based in part on hearsay, it is generally admissible as a business record of the audited entity under Fed. R. Evid. 803(6)." *Id.* at 1257, n.3. Indeed, the reliability of the audit records in *Paddack* stand in stark contrast to that of the Restatement in the instant case. The records in *Paddack* were prepared for purposes of litigation and were aligned with the interests of the sponsoring party – raising a risk that they were self-serving. In contrast, as previously noted, the Restatement in the case at bar appears to

1 be more of a statement *against* the interest of Embarcadero. In any event, Defendant has failed to
2 demonstrate why those portions of the Restatement deemed admissible are unreliable. Furthermore,
3 this Court's ruling is consonant with Judge Ware's ruling in *SEC v. Jasper*, No. C-07-6122-JW, Slip
4 Op. (July 21, 2010) attached to the SEC's response.

5 Finally, the Court finds that in addition to Fed. R. Evid 803(6), the portions of the
6 Restatement deemed admissible herein would be admissible under the residuary hearsay provisions
7 of Fed. R. Evid. 807.

8 This order disposes of Docket No. 253.

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10 IT IS SO ORDERED.

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12 Dated: August 26, 2010

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EDWARD M. CHEN
United States Magistrate Judge